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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 206, 212, 225, and 252

RIN 0750-AH98

Defense Federal Acquisition Regulation Supplement: Acquisitions in Support of Operations in Afghanistan (DFARS Case 2013-D009)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, with changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement two sections of the National Defense Authorization Act for Fiscal Year 2013 that require compliance with domestic source restrictions in the case of any textile components supplied by DoD to the Afghan National Army or the Afghan National Police for purposes of production of uniforms, and eliminate the application of the enhanced authority to acquire products and services from Iraq.

DATES: Effective [Insert date of publication in the **FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT: Ms. Amy G. Williams, telephone 571-372-6106.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published an interim rule to implement sections 826 and 842 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. 112-239).

Section 826 requires compliance with 10 U.S.C. 2533a (the Berry Amendment) in the case of any textile components supplied by DoD to the Afghan National Army or the Afghan National Police for purposes of production of uniforms. The law further states that no exception or exemptions under that section shall apply.

Section 842 modifies section 886 of the NDAA for FY 2008 (Pub. L. 110-181), which provided enhanced authority to acquire products and services from Iraq and Afghanistan in support of operations in Iraq or Afghanistan. Section 842 eliminates application of the enhanced authority to acquisition of products and services from Iraq.

One respondent submitted a public comment in response to the interim rule.

II. Discussion and Analysis

DoD reviewed the public comment in the development of the final rule. A discussion of the comment is provided below. No changes are made to the final based on this comment, however, one change is being made to correct the electronic Code of Federal Regulations.

A. Analysis of public comment

Comment: The respondent stated that under the interim rule, DFARS 225.7703-4(f) and (g) state that certain provisions and clauses prescribed in DFARS subpart 225.11 should not be used when certain provisions and clauses prescribed in 225.7703-4 are included. The respondent asserts that the prescriptions for the affected provisions and clauses in DFARS subpart 225.11 should contain these exceptions, but do not.

Response: Paragraphs (f) and (g) of DFARS 225.7703-4 were not added by the interim rule but were just redesignated from prior paragraphs (e) and (f). The prescriptions for the provisions and clauses addressed in 225.7703-4(f) and (g) do contain the appropriate exceptions, which are summarized below.

- 252.225-7000 is prescribed at 225.1101(1) for use only when the clause at 252.225-7001 is used.
- 252.225-7001 is prescribed at 225.1101(2). Paragraph (i)(C) of the prescription provides an exception if all line items will be acquired using a procedure specified in 225.7703-1(a). Use of the procedures at 225.7703-1(a) requires use of provisions and clauses 252.225-7023, 252.225-7024, or 252.225-7024.
- 252.225-7002 is prescribed at 225.1101(3) for use only when 252.225-7001, 252.225-7021, or 252.225-7036 are used. Since an exception is provided for the use of 252.225-7001 and 252.225-7036 when using the procedures at 225.7703-1(a), and 252.225-7021 is not

included if 252.225-7026 is included, these exceptions also apply to the use of 252.225-7002.

- 252.225-7020 is prescribed at 225.1101((5) for use only when 252.225-7021 is used.
- 252.225-7021 is prescribed for use at 225.1101(6). Paragraph (iii)(B) of the prescription provides an exception if the clause at 252.225-7026 is included in the solicitation and contract.
- 252.225-7035 is prescribed at 225.1101((9) for use only when 252.225-7036 is used.
- 252.225-7036 is prescribed for use at 225.1101(10). Paragraph (iii)(C) of the prescription provides an exception if using the procedures specified in 225.7703-1(a).
- 252.225-7045 and 252.225-7046 are prescribed for use at 225.7503, unless the entire acquisition is exempt from the Balance of Payments program. The policy at 225.7501(a)(5) exempts acquisitions when use of a procedure specified in 225.7703-1(a) is authorized for an acquisition in support of operations in Afghanistan.

B. Other changes

Section 225.1101(6)(i) is being revised to correct the electronic Code of Federal Regulations. In the prescription for clause 252.225-7021, the phrase "instead of the clause at FAR

52.225-5, Trade Agreements," which had been inadvertently omitted, is reinstated.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, and is summarized as follows:

This rule implements sections 826 and 842 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239). The objective of the rule is to (1) require compliance with domestic source restrictions in the case of any textile

components supplied by DoD to the Afghan National Army or the Afghan National Police for purposes of production of uniforms, and (2) eliminate the application of the enhanced authority to acquire products and services from Iraq. The legal basis is the above-cited statutes.

The number of small entities to be affected by the rule is not known. The rule has the potential to impact entities that manufacture textile components, if purchased by DoD to supply to the Afghan National Army or the Afghan National Police for purposes of production of uniforms. Any impact is expected to be beneficial, because it will require purchase from a domestic source.

No comments were received from the public on the Regulatory Flexibility analysis. No comments were received from the Chief Counsel for Advocacy of the Small Business Administration.

There are no projected reporting, recordkeeping, or other compliance requirements.

DoD was unable to identify any significant alternatives consistent with the stated objectives of the statute. DoD does not anticipate any significant economic impact on small entities. Any impact is expected to be beneficial.

V. Paperwork Reduction Act

The rule contains information collection requirements that require the approval of the Office of Management and Budget

under the Paperwork Reduction Act (44 U.S.C chapter 35); however, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 0704-0229, entitled Defense Federal Acquisition Regulation Supplement; Part 225 and Related Clauses (Total approved burden hours - 57,135).

List of Subjects in 48 CFR Parts 206, 212, 225, and 252

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Therefore, DoD amends 48 CFR parts 206, 212, 225, and 252 as follows:

PART 225-FOREIGN ACQUISITION

1. The authority citation for part 225 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR Chapter 1.

225.1101 [Amended]

2. Section 225.1101(6)(i) is amended by removing "Use the clause at 252.225-7021, Trade Agreements, in solicitations and contracts," and adding in its place "Use the clause at 252.225-7021, Trade Agreements, instead of the clause at FAR 52.225-5, Trade Agreements, in solicitations and contracts,".

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